

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2918 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAJU @ LONGI GANGARAM

MARWADI (LUHAR)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

#. The petitioner was detained under the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short, by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, dated March 5, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 11 offences

registered against the petitioner. The authority also took into consideration statements of two anonymous witnesses and came to a subjective satisfaction that powers under Section 9(2) are required to be exercised because of the fear expressed by the anonymous witnesses qua the petitioner. After considering the activities of the detenu as detrimental to public order, the detaining authority came to conclusion that it is necessary to detain the petitioner for immediately preventing him from pursuing his illegal and anti-social activities and the order came to be passed.

#. The petitioner has challenged the order of detention on various counts in this petition under Article 226 of the Constitution. The main ground that is raised is that the statements of the anonymous were recorded on 2nd and 3rd March, 1999, the statements were verified on 5th March, 1999 and the order came to be passed on the same day. The order of detention is, therefore, passed mechanically and without application of mind.

#. The detaining authority has filed affidavit in reply.

#. Mr. S.R. Patel, learned advocate appearing for the petitioner has pressed into service only the above ground. He submitted that the subjective satisfaction arrived at by the detaining authority cannot be genuine as there was no time for the authority to arrive at this subjective satisfaction by cross-checking the allegations made by the anonymous witnesses and the fear expressed by the anonymous witnesses.

#. Mr. Joshi, learned Assistant Government Pleader has opposed this petition. He submitted that simply because an order is passed on the same date of verification, it cannot be said that it suffers from the vice of non-application of mind or that it cannot be said that the subjective satisfaction is not genuine.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

7.1 The statements were verified on 5th March, 1999 and the order of detention came to be passed on 5th March, 1999. There was no time lag between these two events which could have made possible for the detaining

authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses are correct and the fear expressed by these witnesses qua the petitioner is genuine and that, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the order detention bad in law. The subjective satisfaction required to be recorded by the detaining authority is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the verification is on 5th March, 1999 and the order is passed on 5th March, 1999, there was no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise. In this regard, decision in case of Kalidas Chandubhai Kahar v. State of Gujarat [1993(2) GLR 1659] based on similar facts may be referred to.

#. The affidavit in reply also does not disclose as to what exercise was undertaken by the detaining authority for arriving at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. All that is stated is "I have carefully scrutinized, examined and considered all those materials and also personally verified the veracity, genuineness and correctness of the incidents narrated in the statements of witnesses in the unregistered cases and found the same to be genuine and believable". It is true that the subjective satisfaction cannot be judged by a Court and whether the material before the detaining authority was sufficient or not cannot be gone into by the Court. But whether there was cogent material to arrive at the subjective satisfaction has to be examined and in absence of any such material, the subjective satisfaction cannot be said to have been genuinely arrived at. This would render the impugned order bad in law.

#. In view of the discussion above, the petition deserves to be allowed and is hereby allowed. The order of detention dated 5th March, 1999 in respect of the petitioner-Raju @ Longi Gangaram Marwadi (Luhar) is

hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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